

**Order 96-10-23**

UNITED STATES OF AMERICA

permits the United States to allocate any frequencies that were unused during the previous corresponding traffic season.

Prior to the issuance of Order 96-7-4, American held and used all of the 19.5 weekly frequencies for Miami-Ecuador service; Continental held and used 7 of the 15 New York-Ecuador weekly frequencies; and Continental held all of the 10.5 weekly frequencies for service from "Other" U.S. points, but used only 7 of those frequencies (for Houston-Ecuador service).

In Order 96-7-4 we considered proposals from American and Continental to use 7 of the 8 remaining available New York-Ecuador weekly frequencies and the 3.5 banked weekly frequencies from the "Other" cities frequency pool, and decided that the award of 7 weekly New York-Ecuador frequencies to Continental for service from Newark would enhance intergateway competition with the Miami gateway and that the award of 3.5 weekly frequencies to American for Dallas/Ft. Worth-Ecuador service would enhance intergateway competition with the Houston gateway, thereby, in both cases, significantly expanding the availability of alternative services to travelers and shippers in the U.S.-Ecuador market. In Order 96-7-4 we also denied American's request to reallocate 3.5 weekly frequencies from Continental's existing allocation, based on our finding that Continental had a credible plan to use them. Because American had requested a total of 7 weekly frequencies for its Dallas/Ft. Worth-Ecuador service and we allocated American 3.5 weekly frequencies, we required American to notify the Department whether it intended to use the 3.5 weekly frequencies allocated to it.

## **PETITION FOR RECONSIDERATION**

On July 9, American filed a petition for reconsideration of Order 96-7-4, arguing that American should be awarded the 7 weekly New York frequencies in order to promote intragateway competition there rather than the situation where Continental has a monopoly on U.S.-carrier service to Ecuador at the New York gateway. In addition, American states that it will not use the 3.5 weekly banked frequencies allocated to American for Dallas/Ft. Worth service unless it also receives a reallocation of 3.5 weekly frequencies from the 10.5 weekly frequencies held by Continental. American states that it cannot justify the expenditure of funds to cover the start-up expenses for Dallas/Ft. Worth service if the frequency allocation terminates after one year.

## **RESPONSIVE PLEADINGS**

Continental filed an answer in opposition to American's petition. The Dallas/Ft. Worth Parties filed an answer in support.<sup>2</sup>

Continental argues that if intragateway competition is as important at New York as American suggests, it is equally important at Miami, which American dominates, and, thus, if the Department is going to consider reopening the award of New York

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<sup>2</sup> The Dallas/Ft. Worth Parties are comprised of: the Cities of Dallas and Fort Worth, Texas; the Chambers of Commerce of Dallas and Ft. Worth; the Dallas/Ft. Worth International Airport Board; and the North Texas Commission.

frequencies it should apply the same policy to consider reopening the award of Miami frequencies. Continental also argues that American should not be allocated any of the "permanent" 10.5 weekly "Other" points frequencies because Continental will be using all of them effective September 15, 1996, and the Department's long-standing policy is to allow carriers awarded frequencies without dormant conditions to retain them so long as they plan to use them.

The Dallas/Ft. Worth parties support American's petition, arguing that American needs non-banked frequencies in order to provide effective competition at Dallas/Ft. Worth to Continental's Houston-Ecuador service.

## **DECISION**

We have decided to grant American's petition for reconsideration, and on reconsideration to affirm our decision in Order 96-7-4 to grant Continental an exemption and allocate it 7 weekly frequencies to provide service between New York (Newark) and Guayaquil, Ecuador, via Panama City, Panama, and to deny its request for reallocation of 3.5 weekly frequencies of Continental's existing allocation of 10.5 weekly frequencies for service from "Other" U.S. cities.

With regard to the "Other" points frequencies, Continental reaffirmed its plans for expanded and enhanced services in the Houston-Ecuador market using all of the 10.5 weekly "Other" points frequencies allocated to it, and has instituted those services as proposed.<sup>4</sup> It has not been our policy to reallocate frequencies that carriers are currently using. American has presented no argument that persuades us to deviate from that policy. Therefore, we affirm our decision not to reallocate 3.5 of the 10.5 weekly frequencies operated by Continental.

**ACCORDINGLY,**

1. We grant the petition of American Airlines, Inc., for reconsideration of Order 96-7-4, and on reconsideration affirm our decision (a) to grant Continental Airlines an exemption and allocate it seven 7 weekly frequencies to provide service between New York (Newark) and Guayaquil, Ecuador, via Panama City, Panama; and (b) to deny American's request to reallocate frequencies currently allocated to Continental for service from "Other" U.S. cities; and
2. We will serve this order on American Airlines, Inc.; Continental Airlines, Inc.; the Dallas/Ft. Worth Parties; the Regional Business Partnership (Newark); the Ambassador of Ecuador in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations); and the Federal Aviation Administration (AFS-220).

By:

**CHARLES A. HUNNICUTT**  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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<sup>4</sup> *Official Airline Guide*, October 1, 1996.